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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-690

COTTON BAKING COMPANY, INC.,
Petitioner,

versus

LOCAL 369, BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, AFL-CIO,
Respondent.

BRIEF IN OPPOSITION FOR RESPONDENT

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Attorneys for Respondent

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OPINIONS BELOW

The decision of the Arbitrator is reproduced at page 22a of the Petitioner's Appendix. The decision of the District Court, in part reversing the decision of the Arbitrator, is set forth at 377 F.Supp. 1172 and in the Petitioner's Appendix at page 12a. The decision of the Fifth Circuit Court of Appeals, reinstating the decision of the Arbitrator is set forth at 514 F.2d 1235 and in the Petitioner's Appendix at page 1a. The notice of denial of the petition for rehearing is set forth at page 11a of Petitioner's Appendix.

QUESTION PRESENTED

The question in this case is properly stated as follows: Is there error in the decision of the Fifth Circuit Court of Appeals in enforcing an arbitrator's award rendered pursuant to the arbitration provisions of a collective bargaining agreement and remanding the case to the District Court for further proceedings in accordance with the opinion.

STATEMENT OF THE CASE

This case involves a suit instituted by a local union against an employer to enforce an award of an arbitrator, rendered pursuant to the arbitration provisions of a collective bargaining agreement. The arbitration provisions of the collective bargaining agreement are set forth in the original complaint (App. pp. 2-4) 1/ and a complete copy of the agreement is attached to the complaint (App. pp. 8-18). The provisions provide for final and binding arbitration. They contain no limitation on the arbitrator's power to interpret the agreement or develop suitable remedies.

The facts of this case have never been in issue. The District Court decided the case on cross motions for judgment on the pleadings (App. pp. 44 & 45). The record on appeal consisted of the complaint of plaintiff (App. p. 1); answer of defendant (App.

1/ All references to the Appendix in this brief (unless otherwise noted) are to the Appendix filed in the Court of Appeals which has been transmitted to this Court.

p. 39); the plaintiff's first interrogatories and requests for admissions (App. p. 36) and the defendant's answers to the interrogatories and requests (App. p. 43).

The issues in the arbitration proceedings were stated by the arbitrator as "Whether the Company violated the collective bargaining agreement by transferring the work of unloading relay trucks from the job classification of Porter to a job classification in another unit. If so, what should the remedy be?" (App. p. 21). It was further "stipulated by the parties that [the] matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the arbitrator had the authority to render the decision in [the] matter." (App. p. 22). The arbitrator sustained the grievance, awarding the work of unloading the relay trucks to the job classification of Porter and awarded the union montetary damages as a result of the company's breach of the collective bargaining agreement (App. p. 35). Unknown to the arbitrator, a stipulation had been made between counsel limiting the amount of damages to be awarded, if granted by the arbitrator, to about one half of the amount claimed. (App. p. 19, p. 37 at item (d) and p. 43 at item (d); petitioner's appendix, p. 7a at fn. 4).

After the award of the arbitrator was handed down, an agent of the company told the union representative that the company intended to abide by the award. To effect this intent, the job of unloading the relay trucks was reassigned to the Porters and a vacancy for the job of Porter was posted pursuant to

the provisions of the collective bargaining agreement. Three days later, contrary to the award of the arbitrator and in breach of the collective bargaining agreement, the company again took the work of unloading the relay trucks from the Porters, reassigned it to the relay drivers (the action which had triggered the original grievance), and took down the posting of the vacancy in the job of Porter (App. p. 5, ¶XII and XIII of complaint and App. p. 40, ¶XII and XIII of answer).

The company, in its answers to the union's requests for admissions, filed on October 15, 1974, seven months after the arbitrator's decision was rendered, admitted that the following statements were true: "The decision of the arbitrator is not being adhered to or honored at this time by Cotton Brothers [sic] Baking Co., Inc.; "For approximately three days subsequent to the award of the arbitrator, the work of unloading the relay trucks was assigned to Porters, who are employees who work within the bargaining unit of Local 369"; "At the present time the work of unloading the relay trucks is being performed by relay drivers"; "The performance of the duties of unloading the relay trucks by the relay drivers is contrary to the decision of the arbitrator"; and that "Cotton Baking Co., Inc. has not paid the amounts due to the union pursuant to the arbitrator's award." (App. pp. 37-38 requests nos. IV(e)(f)(g)(h)(i) and App. pp. 43-44, answers IV(e)(f)(g)(h)(i). The company further explained that it failed to abide by the decision of the arbitrator because it was "improper and illegal" (App. p. 44, answer VII).

Due to the company's noncompliance, the union instituted suit to enforce the arbitrator's award. The company resisted enforcement of the entire award and set forth many of the same arguments before the District Court as it did in arbitration. The District Court enforced the award insofar as it reassigned the job duties but reduced the amount of damages awarded to the union, and on that basis refused to award the union attorneys fees.

The union appealed the judgment to the Fifth Circuit. No appeal was taken by the company.

The Fifth Circuit reversed the District Court and reinstated the decision of the arbitrator in accordance with the Steelworkers Trilogy. This is the decision which gives the Petitioner complaint.

ARGUMENT

What Petitioner seeks from this Court is review of the arbitrator's award. This Court has consistently held that neither it nor the lower Courts have any business reviewing the decision of arbitrators.

1. There is no misapplication of law and no conflict among the decisions of the Circuits.

The decision of the Fifth Circuit correctly deferred to the arbitrator's award and found that the arbitrator had authority to render the award. That holding is in accord with the Steelworkers trilogy, United Steel-

workers of America v. American Mfg. Co., 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed. 2d 1403 (1960); United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed. 2d 1409 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed. 2d 1424 (1960), and other decisions of the Courts pursuant to the trilogy decisions. It is well settled that an arbitrator, unless restricted by contractual language, has authority to use "his informed judgment in order to reach a fair solution of a problem", especially "when it comes to formulating remedies". United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. at 597, 80 S.Ct. at 1361, 4 L.Ed. 2d 1428 (1960).

There are no Circuit conflicts in the application of the substantive law in this case. The petitioner cites a decision of the Third Circuit [Local 127, United Shoe Workers of America, AFL-CIO v. Brooks Shoe Manufacturing Company, 298 F.2d 277 (3rd Cir. 1962)] which did not involve arbitration and is not in conflict with the decision of the Fifth Circuit of which Petitioner seeks review. The other case cited [Publishers' Association of New York City v. Newspaper and Mail Deliverers Union of New York and Vicinity, 18 Labor Arbitration Reports 855 (1952)] is a decision of a state court of original jurisdiction and pre-trilogy.

2. The Decision of the Fifth Circuit in Regard to Attorneys Fees is not Final.

The District Court denied the union attorneys fees in its judgment because it set aside

the decision of the arbitrator. The Court of Appeals stated: "Because we have reached a different conclusion on the merits of this dispute we remand the case to the district court for a determination as to the propriety of awarding attorneys fees." 514 F.2d at 1238. Since the Court of Appeals remanded the issue as to attorneys fees it is not ripe for review by this Court. Brotherhood of L. F. & E. v. Bangor & A.R.C., 389 U.S. 327, 88 S.Ct. 437, 19 L.Ed. 2d 560 (1967).

Moreover, the remand for a determination on the issue of attorneys fees is not contrary to Alyeska Pipeline Service Co. v. The Wilderness Society, ____ U.S. ____, 44 L.Ed. 2d 141, 95 S.Ct. ____ (1975) since that case involved the private attorney general theory of recovery of attorneys fees which was not referred to nor relied upon by the Court of Appeals in its decision to remand the case to the District Court.

CONCLUSION

It is respectfully submitted that the petition fails to sustain its burden pursuant to Rule 19 that the decision of the Fifth Circuit is in conflict with decisions of this Court or another Circuit Court of Appeal. The case involves principles which have been settled by this Court in the Steelworkers trilogy which were correctly applied by the Fifth Circuit. For these reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

BY: _____

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CERTIFICATE OF SERVICE

This is to certify that I have this day served SAMUEL LANG, WILLIAM F. BANTA, Kullman, Lang, Inman & Bee, P.O. Box 60118, New Orleans, LA 70160, with a copy of Brief in Opposition for Respondent, by depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This _____ day of December, 1975.

_____
ROBERT J. MARTIN, JR.